



26 July 2023

Congressman Jim Jordan
Chair, House Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

Congressman Jerrold Nadler
Ranking Member, House Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

Re: Input on the mark up of *The Pro Codes Act* (S.835; H.R. 1631)

Dear Chairman Jordan,

The Institute of Electrical and Electronics Engineers, Incorporated (IEEE) appreciates the opportunity to provide additional information that may be helpful to House Judiciary Committee members after the 19 July 2023 markup session on the *Pro Codes Act* (H.R. 1631). We believe the following information will provide clarifications on some of the discussions that occurred during the hearing and assist Committee members during their consideration of possible updates to the legislation.

IEEE, a New York not-for-profit organization, categorized as a public charity under Internal Revenue Code Section 501(c)(3), was established in 1963 with the merger of two organizations -- the American Institute of Electrical Engineers (AIEE), which was formed in 1884, and the Institute of Radio Engineers, which was formed in 1912. IEEE developed its first standard in 1888 when engineers saw the need to standardize terminology within engineering fields. Like most standards developing organizations (SDOs) in the United States, IEEE was established as a corporation, independent of and without U.S. government involvement.

Participants in standards development Working Groups come predominantly from individuals affiliated with industry, academia, and the public (or an interested subset). Government employees can participate (subject to their agency's rules), but government employees typically are an exceedingly small (or non-existent) percentage of the individuals participating in the Working Group process.

IEEE has an active portfolio of 1,032 standards and more than 1,040 standards projects under development by over 30,000 individual participants and over 430 entities, covering a wide range of technical areas such as Ethernet, wireless, energy distribution, medical devices, Ethics in AI, and nuclear safety. For example, the IEEE-published National Electrical Safety Code® (NESC®), the preeminent code adopted by most states, sets the ground rules and guidelines for practical safeguarding of utility workers and the public during the installation, operation, and maintenance of electric supply, communication lines, and associated equipment.

SDOs typically do not receive any government funding for their standards development activity. Rather, we rely on revenues from sale and licensing of standards, from participation-fees for standards related activities, or general membership fees to support our standards-development activities. For IEEE standards, membership revenue is a very small part of overall revenue, and intentionally so. IEEE's standards program is built on the participation of individual engineers, technologists, and other professionals. If IEEE standards development depended on membership fees to sustain its activities, the cost per member would be much greater, and may be prohibitive for many individual engineers. In fact, anyone with material interest can attend most IEEE Standards Working Groups without being an IEEE member. This makes our Working Groups accessible to all stakeholders anywhere in the world, and it allows the broadest representation in the development of our standards. This helps to ensure that no one party or group of parties unreasonably dominates our Working Groups and allows us to promote processes that are key to the safety of the public, engineers, and technologists. Increasing membership

dues could change who is able to participate (by changing the focus to who can afford to participate), impact the diversity and representation in IEEE Standards Working Groups, and lower the quality of IEEE standards. Since our volunteers create value by participating in our standards development, we redirect the source of funding to those who receive the value from the output—the purchasers of the standard and standards related products.

SDOs develop voluntary standards that are not legally binding on anyone. Some of these standards are valuable without ever becoming legally binding (for example, IEEE’s Ethernet and Wi-Fi standards). Other standards provide guidelines that governments can -- but are not required to -- adopt.

After a copyrighted standard is published, the federal government may choose to adopt a privately developed standard, usually without any input from the SDO. Development of these standards through SDOs saves governments the expense of developing their own codes, avoids the need for government direction of a non-core function, and promotes uniformity of laws across the country. The federal government has a long-standing policy to adopt such standards unless there is a valid reason to not do so. That policy is expressed by the Office of Management and Budget (“OMB”) in Circular A-119. This circular directs all federal agencies to incorporate “in whole, in part, or by reference” privately developed standards for regulatory and other activities “whenever practicable and appropriate.” See OMB Circular A-119, 63 Fed. Reg. 8546, 8554-55. OMB Circular A-119 expressly acknowledges that doing so “[e]liminate[s] the cost to the government of developing its own standards.” To incentivize private authorship of works useful to the government, OMB requires agencies to “observe and protect the rights of the copyright holder and any other similar obligations.” This policy of federal government use of privately developed standards was codified and fortified in the National Technology Transfer and Advancement Act of 1995 (“NTTAA”).

Once IEEE is informed, members of the public have access, at no monetary cost, to its standards that have been incorporated into law. The American National Standards Institute (ANSI) provides a virtual public reading room where any member of the public may read the full content of a standard. Likewise, some SDOs (including IEEE) provide similar virtual reading rooms for their organization’s standards that have been incorporated into law. SDOs have several reasons why they may need to require registration to access standards (whether or not the standards are provided at no cost to the user). Beside preventing misuse of the standard, registration allows the SDO to reach out to those who use the standard to alert them of associated errata/corrigenda (i.e., corrections) to the standard, and to invite them to participate in revising or updating the standard. In addition, we are able to gain knowledge about who uses our standards and from what regions of the world, which can help identify potential future projects.

Many of the comments and recommendations made by Committee members during the markup session would move the Pro Codes Act in the right direction. For example, using links to the standard in regulations will help in coordinating access for the public. IEEE submitted a letter (22 May 2023)¹ showing markups that we believe would help in creating a more balanced regulation. We look forward to assisting the Committee with understanding the standards development industry during its deliberation.

Sincerely,



President, IEEE-USA

cc: Members of the House Judiciary Committee

¹[Letter to Chairman Darrell Issa, https://ieeusa.org/assets/public-policy/policy-log/2023/053023.pdf](https://ieeusa.org/assets/public-policy/policy-log/2023/053023.pdf)